

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mark Carpenter	Team: Team # 7	CCRB Case #: 200615435	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/15/2006 6:30 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 5/15/2008	EO SOL 5/15/2008	
Date/Time CV Reported Fri, 11/17/2006 4:35 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/17/2006 4:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			NARCBBX
2. POM Carmelo Perez	07368	928951	NARCBBX
3. SGT John Urena	03550	907485	NARCBBX
4. CPT Lorenzo Johnson	00000	894081	NARCBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Christop Fasano	00000	915693	NARCBBX
2. DT3 Rolando Carbonell	92801	928017	NARCBBX

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Urena	Abuse: Sgt. John Urena entered § 87(2)(b) in the Bronx.	
B.CPT Lorenzo Johnson	Abuse: Cpt. Lorenzo Johnson supervised the entry into § 87(2)(b) in the Bronx.	
C.POM Carmelo Perez	Force: PO Carmelo Perez pointed his gun at § 87(2)(b)	
D. An officer	Force: An officer pointed his gun at § 87(2)(b)	
E. An officer	Discourtesy: An officer spoke rudely to § 87(2)(b)	

Synopsis

§ 87(2)(b) called the CCRB on November 17, 2006 at 4:35 PM to report an incident that occurred on November 15, 2006 at approximately 6:30 PM. At that time, § 87(2)(b) was home at § 87(2)(b) in the Bronx, with her fiancé, § 87(2)(b). At that same time, a team from Bronx narcotics had arrived at the building to execute a search warrant for § 87(2)(b) that was obtained by PO Carmelo Perez. Sgt. John Urena, who was also present, conducted surveillance work for this warrant. The team was supervised by Capt. Lorenzo Johnson and Lt. Christopher Fasano. PO Rolando Carbonell was also a member of the team. When the team arrived on the third floor of § 87(2)(b)'s building, PO Perez observed that the doors had been painted and the apartment letters were no longer visible. PO Perez, standing with Sgt. Urena, then randomly selected a door and knocked on what was actually § 87(2)(b). When § 87(2)(b) opened the door, Sgt. Urena and the field team entered the apartment under the overall supervision of Capt. Johnson (Allegations A and B). As the officers entered the apartment, PO Perez moved § 87(2)(b) aside by putting his firearm in § 87(2)(b)'s torso (Allegation C). One officer proceeded to the rear of the apartment and pointed his weapon at § 87(2)(b) (Allegation D). One officer, as he walked past § 87(2)(b) said, "Oh shit, we're in the wrong apartment" (Allegation E).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) and § 87(2)(b) live on the § 87(2)(b) of § 87(2)(b) in the Bronx. The building is a five-story structure with four units per floor. § 87(2)(b) and his fiancée, § 87(2)(b) have lived in the apartment for six years.

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) black female. She is 5' 2" with an average build.

Field Interview: § 87(2)(b) January 8, 2007 (encl. 6A-D)

On November 15, 2006 at about 6:30 PM, § 87(2)(b) and § 87(2)(b) were home listening to music when they heard knocking at the door. No one else was at the apartment at this time. § 87(2)(b) said that they hesitated answering the door for a moment because they assumed it was a drug buyer and they were tired of people knocking on their door for drugs. § 87(2)(b) offered to answer the door and § 87(2)(b) remained in the living room, on the couch that was on the wall separating the bedroom and living room. § 87(2)(b) asked, "Who is it?" as he approached the front door but § 87(2)(b) was not sure if he received a response.

§ 87(2)(b) opened the door and § 87(2)(b) could hear § 87(2)(b) saying, "Wait! Wait!" § 87(2)(b) did not hear § 87(2)(b) saying anything else. From her position on the couch, § 87(2)(b) had line-of-sight down the hall and all the way to the front door but § 87(2)(b) did not look up to see § 87(2)(b) open the door or anyone come through the door way. § 87(2)(b) did not hear any of the exchange between § 87(2)(b) and anyone at the door. § 87(2)(b) did not see anyone come through the door because by the time § 87(2)(b) was starting to get up, she was being met by PO1, who pulled a gun from his left ankle and asked her if there was anyone else in the apartment. § 87(2)(b) described PO1 as male, black, 5' 8-9", and wearing blue jeans and a NYPD vest. PO2 was right behind PO1 as they approached the living room but PO2 never entered the living room. § 87(2)(b) could only described PO2 as a white male with a shield around his neck. PO1 initially pointed the weapon at § 87(2)(b) and then pointed it down to the floor. § 87(2)(b) said the only thing she saw was "gun." § 87(2)(b) was still seated on the couch and said that there was no one in the apartment and started to get up to open the bedroom door. Seeing this, PO1 said that he would do it himself and then opened the bedroom door and looked in. PO1 saw that there was no one in the bedroom – he did not actually step in – and then announced that it was the wrong apartment and just "disappeared." PO1 and PO2 were the only officers § 87(2)(b) saw in the apartment. § 87(2)(b) did not see any officers enter any other rooms in her house but noted that she would not have been able to see this from her vantage point. § 87(2)(b) did not see any other weapons drawn during the incident.

After the officers left the living room, § 87(2)(b) got off the couch and went toward the hall. There were maybe 2-3 officers still near the front door and out on the § 87(2)(b) floor landing. § 87(2)(b) was against the wall by the front door. § 87(2)(b) did not observe PO1 and PO2 in the apartment at this point. § 87(2)(b) did not hear what, if any, conversation occurred between § 87(2)(b) and the officers at this point. All the officers then left the apartment and, § 87(2)(b) believes, went next door to § 87(2)(b). § 87(2)(b) said that there are drugs being sold out of § 87(2)(b).

§ 87(2)(b) did not recall any of the officers identifying themselves as officers at any point. § 87(2)(b) said that she only knew for certain that individuals were officers when a supervisor came by.

A supervisor came to § 87(2)(b)'s apartment later but § 87(2)(b) dealt primarily with this individual. § 87(2)(b) remembered the supervisor apologizing and asking if an ambulance was required. § 87(2)(b) said that the supervisor asked about an ambulance because one of the officers had dropped a battering ram on § 87(2)(b)'s foot and § 87(2)(b) had told the supervisor this. The supervisor told § 87(2)(b) that the officers had apprehended individuals in front of the building who said that they had purchased drugs from § 87(2)(b) — § 87(2)(b)'s apartment.

Follow-up Phone Conversation: October 18, 2007 (encl. 21)

§ 87(2)(b) was asked several follow-up questions on the above date § 87(2)(g). § 87(2)(b) confirmed that the door to their apartment was painted-over soon before the incident. She said the door originally was grey with a stick-on “§ 87(2)(b)” decal but they then just painted over the whole door and the decal with black paint. § 87(2)(b) said that the decal was still visible, however. The investigator also asked § 87(2)(b) why the drug dealers were always confusing § 87(2)(b) and § 87(2)(b) since § 87(2)(b) and § 87(2)(b) had both admitted that they were frustrated with strangers knocking on their door. § 87(2)(b) said that she had “no idea” and that drug buyers were making this mistake long before the door was painted over.

Notice of Claim (encl. 7A-E). § 87(2)(b) filed a notice of claim with the City on behalf of § 87(2)(b) and § 87(2)(b) on § 87(2)(b). The notice of claim contains the following summary of the incident:

“On or about November 15, 2006 at approximately 6:30 PM and at all times thereafter on that day, claimants § 87(2)(b) and § 87(2)(b) were sitting at home in their apartment when the respondent’s agents, servants, employees, and police officers broke down the claimants’ door, pointed guns at them, dropped a ram on claimant, § 87(2)(b)'s foot and battered, assaulted, yelled, frightened, and scared the claimants as well as smashing their door in and wantonly and recklessly damaging their personal property. The aforementioned break-in was without a proper warrant for the premises entered. All of the above were without merit, or a warrant by the respondents City of New York, New York City Police Department.”

The claim seeks unspecified damages for “pain and suffering including but not limited to illegal detention, deprivation of Civil Rights and personal liberty, medical expenses, attorney’s fees, humiliation, injury to name and reputation, emotional distress, psychological damages, loss of services, limitation of movement, disruption of lifestyle.”

Results of Investigation

§ 87(2)(b) is a § 87(2)(b) Hispanic male. He is 5’ 7” with an average build, brown hair, and brown eyes. § 87(2)(b)

Medical Documents: § 87(2)(b) (encl. 4A)

Medical Records obtained from § 87(2)(b) regarding § 87(2)(b)'s emergency room visit on the date of the incident reflect that he complained of pain to his right foot as a result of a direct blow

approximately two hours before treatment. The agent responsible for the blow is not listed. § 87(2)(b)'s level of pain is recorded as "moderate" – a 6-7 on a scale of 1-10 where 10 is indicative of "severe" pain.

Field Statement, § 87(2)(b): January 3, 2007 (encl. 5A-E)

On November 15, 2006, at 6:30 PM, § 87(2)(b) was in his apartment listening to music with § 87(2)(b). There was a simple knock at the door – the officers did not identify themselves as such – and § 87(2)(b) immediately went to the door and looked through the peephole. Through the peephole, § 87(2)(b) could see a black male – identified by the investigation as PO Carmelo Perez – that he did not recognize; he could not tell whether this individual was wearing any specialized equipment. § 87(2)(b) did not see any other individuals in the hallway.

§ 87(2)(b) noted that his building is known to house drug dealers. Consequently, § 87(2)(b) believed that this individual was looking to buy drugs but was at the wrong apartment. § 87(2)(b) said that he has had people knock on his door "at all hours" in the past, looking for drugs. This annoys § 87(2)(b) so he planned on opening the door and telling the individual that he "should know where he's going" and to go away. § 87(2)(b) did not have any verbal exchange with the individuals on the other side prior to opening the door.

§ 87(2)(b) then opened the door about 1.0-1.5 feet and PO Perez immediately pushed the door open the remainder of the way and entered the apartment. § 87(2)(b) described PO Perez as male, black, 5' 8-9", with a medium build, dreadlocks, dark complexion, and wearing blue jeans, a brown hooded sweatshirt and a NYPD vest. As additional officers – at least four – entered around him, PO Perez put his 'Glock' firearm in § 87(2)(b)'s right ribcage, and said, "Police. Search warrant." PO Perez did not have any other specialized equipment.

As the other officers entered the apartment, PO Perez moved § 87(2)(b) several feet away from the front door and against the wall in the hallway, facing the wall. § 87(2)(b) diagramed the layout of his apartment and noted the location he was now standing with an "X" (encl. 5D)). PO Perez continued to point the weapon at § 87(2)(b) but it was not making physical contact with him. While entering, an officer set the battering ram down on the ground; § 87(2)(b) speculated that he may have been trying to lean it against the wall. Regardless, the officer set the battering ram onto the floor and it then fell over onto § 87(2)(b)'s bare right foot.

§ 87(2)(b) admitted that he was distracted by the gun being pointed at him but said that he did look up briefly enough to see PO1 enter the living room, retrieve some type of weapon from his ankle, and then point the weapon at § 87(2)(b) asking if there was anyone else in the apartment. § 87(2)(b) could only describe PO1 as male. § 87(2)(b) was sitting on the couch, which is against the wall that separates the bedroom and the living room. § 87(2)(b) heard § 87(2)(b) tell the officer that there was no one else in the apartment. After this point, § 87(2)(b) said that he lost focus on the rear of the apartment and was not sure what exactly happened next. § 87(2)(b) was not sure if they went into the bedroom but said the officers did not open the closet door or enter the kitchen or the bathroom.

Soon after § 87(2)(b) was questioned, PO3 walked past § 87(2)(b) toward the front door and said, "Oh shit, we're in the wrong apartment." § 87(2)(b) would not be able to identify this officer by face or name because he was facing the wall when the comment was made; § 87(2)(b) could only describe this person as male. § 87(2)(b) said that this officer was not the same officer that questioned § 87(2)(b).

The other officers then quickly exited the apartment. § 87(2)(b) said that there was a lot of yelling during the incident and that the officers were probably in the apartment for less than five minutes. One of the last officers out the apartment, who had captain's insignia on his raid jacket, said that a supervisor would be back to speak with them. § 87(2)(b) said that a captain's insignia is two gold bars on the collar of the jacket. § 87(2)(b) told the captain, "You've got the wrong place – it's those motherfuckers next door [§ 87(2)(b)] and we're tired of it." § 87(2)(b) did not notice the captain enter the apartment. The original team then went next door and § 87(2)(b) could hear that they did enter the apartment.

“Shortly later,” Lt. Christopher Fasano, who identified himself by name, came to § 87(2)(b) s apartment to speak to them about the incident. The lieutenant asked if everyone was alright and explained that his name and reputation were on the line. The lieutenant also explained the Department’s efforts to “clean up” the neighborhood and how it was not an easy job. The lieutenant then provided § 87(2)(b) with his cell phone number and a contact number at the stationhouse. § 87(2)(b) was not certain why the numbers were provided to him – whether in regards to the present incident or in regards to future incidents – but § 87(2)(b) did say that the lieutenant explained the ride along program. § 87(2)(b) told the lieutenant that his foot had been injured and the lieutenant offered an ambulance. § 87(2)(b) declined the ambulance because, at this point, he “just wanted him out of [his] house.” § 87(2)(b) was present for the conversation with the lieutenant but § 87(2)(b) could not recall anything significant that she may have stated.

The lieutenant then left the apartment but returned after the entry next door was completed, and told § 87(2)(b) that they had found “what they were looking for” in the diaper of a § 87(2)(b)-old baby. § 87(2)(b) did not have any additional contact with the members of the original team before they left the building. § 87(2)(b) has never had contact with these officers before. § 87(2)(b) does not have a relationship with his neighbors in § 87(2)(b) and said that they have been in § 87(2)(b) as long as § 87(2)(b) has been in § 87(2)(b). § 87(2)(b) said that there has been previous police activity in the building but he was not aware of there being police activity at that specific apartment before.

Later that night, § 87(2)(b) went to § 87(2)(b) for pain and swelling he was experiencing in his foot. He said he experienced this pain and swelling for weeks. § 87(2)(b) s foot was x-rayed and it was determined to be a bruise; no fractures were found.

Aside from PO Perez’s weapon and the officer in the rear with § 87(2)(b) no other weapons were pointed during the incident.

Identification of Officers Interviewed

Lt. Christopher Fasano was identified by the complainants. PO Carmelo Perez was identified in the warrant that existed for § 87(2)(b) § 87(2)(g)

PO Carmelo Perez

PO Perez is a § 87(2)(b)-old black male who was appointed to the force in July 2001. He is 5’ 8” and 220 pounds with black hair and brown eyes.

On November 15, 2006 at 4:35 PM, PO Perez was working from 10:00 AM to 6:00 PM as part of the 44th Precinct module of Bronx Narcotics, which was headed by Sgt. John Urena. PO Perez was working in plainclothes as the “leader” of the team. PO Perez said that this incident was his second warrant. PO Perez has been in Bronx Narcotics for about a year and was assigned to the 40th Precinct prior to that.

Memo Book: November 15, 2006 (encl. 8A-B)

1048 hrs: Tac meeting w/ 44 Team

1140 hrs: Tac plan equip rm

1500 hrs: Receive equip

1700 hrs: 98 Tac up 44 PCT

1750 hrs: Executed S/W. Wrong door § 87(2)(b)

1800 hrs: Executed S/W. 1 under. Perp arrested named in kite.

CCRB Statement: June 14, 2007 (encl. 10A-C)

PO Perez was responsible for the research conducted prior to the execution to the warrant. § 87(2)(e), § 87(2)(f)

Approximately two days prior to executing the warrant – on or around November 13, 2006, PO Perez went to the § 87(2)(b) floor of § 87(2)(b) and took photographs of the target door. On this date, the doors were painted beige and each door was labeled with an apartment letter.

On November 15, 2006, the team planned to execute a search warrant in § 87(2)(b). Prior to arriving at the building, the officers had already decided that they were going to conduct a “soft entry” into the apartment § 87(2)(e), § 87(2)(f). PO Perez noted that other factors that are considered when deciding between a standard hard entry and a soft entry are whether there are known weapons in the target apartment or if the target perpetrator is known to be dangerous; these latter two factors were not present in this situation.

PO Perez described the difference between a normal ‘hard’ entry and a ‘soft’ entry. PO Perez said that all heavy equipment is “left behind” when conducting a soft entry. Specifically, PO Perez said that the bunker (shield), ram (an estimated 80 pounds), and the “hydro,” which is a device PO Perez says pushes open the door frame and then forces open the door (an estimated 100 pounds) are left behind. PO Perez said that he obtained and transported this equipment to the apartment building but that they did not carry it upstairs. PO Perez was asked what happened if they planned for a soft entry and left the equipment downstairs but then the target apartment did not comply. PO Perez said that it would be the supervisor’s decision whether to forcibly open the door and that if this decision was made, the equipment would then have to be brought upstairs.

PO Perez then proceeded to § 87(2)(b) with the rest of his team. When PO Perez and the team arrived on the § 87(2)(b) floor, however, he noticed that all of the apartment doors had been painted black and the letters previously labeling the apartments were no longer visible. PO Perez said that the third floor is not much larger than a CCRB interview room and that the doors to apartments § 87(2)(b) and § 87(2)(b) are on the same wall and practically touching and that the doors to § 87(2)(b) and § 87(2)(b) are on walls perpendicular to § 87(2)(b) and § 87(2)(b) with § 87(2)(b) facing § 87(2)(b).

Sgt. Urena was standing with PO Perez at the doors for apartment § 87(2)(b) and § 87(2)(b). The landing was too small for the team, which was consequently standing on the stairs. Based on the layout of the floor and the number of apartments, PO Perez was able to deduce that the target apartment was one of the center two apartments. The following is the verbatim exchange regarding how PO Perez came to knock on the door to apartment § 87(2)(b).

Inv. Carpenter: “When you got up stairs and you realized it was freshly painted, what did you— what did you do? What was your plan of action at that point or how did you—”

PO Perez: “Uh, it felt wrong. You know? I don’t know if you’ve been when something just doesn’t feel right. It didn’t feel right and – something – I was somewhat confused. But, and, you know, I just said, I didn’t know which one and I knocked on the door.

Inv. Carpenter: “Was it just basically random then between § 87(2)(b) and § 87(2)(b)? You knew it was one of –

PO Perez: “Yah, I knew it was one of them and then [knock, knock, knock] and the gentleman opened the door. And then, I just thought, when he opened the door, I was like, this ain’t the apartment.

PO Perez “may have” created a diagram of the § 87(2)(b) floor illustrating where apartments § 87(2)(b) were located but he was not sure. The photos PO Perez took of the apartment door were with PO Perez’s warrant paperwork; they were not on his person when he was executing the warrant. PO Perez said that it is not typical to bring the photo to the site of the warrant.

A male, known to the investigation as § 87(2)(b) opened the door and PO Perez identified himself as the police. PO Perez said that § 87(2)(b) was a black male and PO Perez knew that the target perpetrator was a Hispanic male. PO Perez knew this from his warrant investigation, which included arrest photos from previous arrests and observation of the male as recent as 2:00 PM on the date of the incident.

In addition to race/skin tone, PO Perez said § 87(2)(b) was older – perhaps in his mid-50s – than the target perpetrator. PO Perez also knew the perpetrator was about 6’ 2” and § 87(2)(b) was not this tall. In addition to the physical discrepancies, PO Perez noticed loud “church” music coming from the apartment that was inconsistent with what he was expecting. Furthermore, § 87(2)(b)’s spontaneous statement, “You fucking guys hit the wrong apartment – the drug dealer lives next door,” led PO Perez to conclude that he went to the wrong apartment. When PO Perez concluded that it was the wrong apartment, he communicated it to Sgt. Urena – the exact statement is unknown – but PO Perez said that Sgt. Urena also knew what they were looking for and that Sgt. Urena made the same conclusion as PO Perez.

After § 87(2)(b)’s spontaneous statement, PO Perez apologized to § 87(2)(b). PO Perez said he “kept apologizing” until Sgt. Urena stepped in and advised PO Perez to step to the side, which he did. Sgt. Urena then spoke with § 87(2)(b). Capt. Johnson also joined Sgt. Urena at the door and PO Perez also believes that Lt. Fasano may have joined them at the door. PO Perez said that he did not know all that was said during this conversation because he was standing off to the side. PO Perez estimated that the entire interaction at apartment § 87(2)(b) lasted about 10 minutes.

Eventually, the conversation with § 87(2)(b) concluded and the focus shifted from apartment § 87(2)(b) to apartment § 87(2)(b). The officers again executed a search warrant by knocking, displaying the search warrant, and entering the apartment with consent.

PO Perez did not go back to apartment § 87(2)(b) after executing the warrant in § 87(2)(b). PO Perez said that Sgt. Urena did not go back to apartment § 87(2)(b) either. PO Perez said that they had no reason to go back “and give the guy more problems.”

No officer ever crossed the threshold of apartment § 87(2)(b). PO Perez said that he never crossed the threshold of apartment § 87(2)(b). He stated that neither he nor Sgt. Urena had their weapons drawn when § 87(2)(b) opened the apartment. PO Perez did not nor did he hear any other officer say, “Oh shit, wrong apartment.”

Sgt. John Urena

Sgt. Urena is a § 87(2)(b)-old Hispanic male who was appointed to the force in February 1994. He is 5’ 9” and 250 pounds with brown hair and brown eyes.

On November 15, 2006, Sgt. Urena was working as the supervisor of a warrant team that included PO Carmelo Perez. He was working from 9:30 AM to 6:05 PM and was in plainclothes. Sgt. Urena has worked in Bronx Narcotics for the past 2 years and estimated that he conducted between 40-50 search warrants last year. Sgt. Urena had not conducted a warrant at § 87(2)(b) before.

Memo Book: November 15, 2006 (encl. 11A-B)

No relevant entries.

CCRB Statement: June 14, 2007 (encl. 12A-C)

PO Perez requested this present warrant. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) all surveillance was conducted by Sgt. Urena. Capt. Johnson and Lt. Fasano were not involved in any of the surveillance, although, as Sgt. Urena’s supervisors, they did accompany him for the execution of the warrant. Sgt. Urena conducted surveillance two days before the search warrant was executed; no surveillance was conducted on the day of the execution. § 87(2)(e), § 87(2)(f)

On November 15, 2006, Sgt. Urena and his team went to § 87(2)(b) to execute a warrant at apartment § 87(2)(b). Sgt. Urena said that no heavy equipment is used during a soft entry and that, instead, the officers simply knock on the door and announce that they have a search warrant. Sgt. Urena said that a battering ram is not used during a soft entry and that no member of the field team had it with them.

Once the team reached the § 87(2)(b) floor, however, they observed that the doors had been freshly painted and the letters that previously distinguished the apartments were no longer visible. The doors were previously identified by letter, written on the door itself. Sgt. Urena said that the doors to apartment § 87(2)(b) and § 87(2)(b) are inches apart and that the doors to apartments § 87(2)(b) and § 87(2)(b) are on the same wall as § 87(2)(b) and § 87(2)(b) but several feet away. The officers then randomly knocked on the incorrect apartment, apartment § 87(2)(b).

Sgt. Urena said twice that he did not recall the sex of the individual that opened the door at apartment § 87(2)(b) but also referred to the individual as a “gentleman” and using male pronouns. Regardless, the identity of this individual is known to the investigation as § 87(2)(b) and will therefore be referred to as such. Once § 87(2)(b) opened the door, Sgt. Urena “walked in with Officer Perez” and explained that they had a search warrant. Only Sgt. Urena and PO Perez crossed the threshold of § 87(2)(b)’s apartment but Sgt. Urena said that neither officer went beyond the doorway; no other officers entered the apartment to any degree. Neither Sgt. Urena nor PO Perez had their weapons drawn when § 87(2)(b) opened the door and, to Sgt. Urena’s knowledge, no members of the field team had their weapons drawn. § 87(2)(b) told the officers that they had the wrong apartment and Sgt. Urena “walked right out of the apartment” and knocked on the neighboring door. Sgt. Urena said that he might have been in the apartment 10-15 seconds. The other members of the team were waiting on the stairs, 4-5 feet from the door to apartment § 87(2)(b) no other officers entered the apartment. During his earlier observation work, Sgt. Urena knew the target perpetrator to be a tall Hispanic male and § 87(2)(b) did not match this description. Capt. Johnson and Lt. Fasano did not enter apartment § 87(2)(b) or have any contact with its residents. The officers then moved directly next door; there were no additional meetings or discussion held.

At apartment § 87(2)(b) the officers again knocked on the door and a female opened the door. The officers explained that they had a search warrant and the female granted them entry. Narcotics were recovered from this search.

After completing the entry into apartment § 87(2)(b) Sgt. Urena returned to apartment § 87(2)(b) to apologize for knocking on their door. Sgt. Urena thought that Capt. Johnson may have accompanied him at this time. Sgt. Urena stated that there was a male and a female in the apartment and remembered interacting with the female but did not know if it was during the first or second interaction. Sgt. Urena recalled the female knitting with a ball of yarn.

No documentation was created regarding the officers’ contact with the residents of apartment § 87(2)(b). Sgt. Urena did not nor did any other officer to his knowledge say, “Oh shit, we’re in the wrong apartment.”

Lt. Christopher Fasano

Lt. Fasano is a § 87(2)(b)-old white male who was appointed to the force in June 1995. He is 5’ 11” and 250 pounds with brown hair and brown eyes.

On November 15, 2006, Lt. Fasano was working as the Bronx Narcotics 44th Precinct module supervisor from 9:40 AM to 6:15 PM. He was working in plainclothes. Lt. Fasano has been with Bronx Narcotics for 2.5 years. Lt. Fasano estimated that he has participated in “hundreds” of warrants.

Memo Book: November 15, 2006

No entries.

CCRB Statement: June 26, 2007 (encl. 13A-C)

On November 15, 2007 at approximately 6:30 PM, Lt. Fasano’s module was executing Bronx Supreme Court warrant § 87(2)(b) at § 87(2)(b). § 87(2)(b) PO Carmelo Perez was the lead investigating officer on this warrant; Lt. Fasano was not directly involved in any of this work. By the time of their ‘tac meeting,’ the officers knew that there were small children in the apartment and that the residents did not have an extensive or violent criminal history. Lt. Fasano did not know how PO Perez obtained this information. These two factors led the officers to choose to execute a ‘soft entry,’ even though they had authorization for a no-knock, forced entry. Even though they planned for a soft entry, the

officers still brought their tools with them to the § 87(2)(b) floor in case they became necessary. These tools included the bunker (plastic shield), ram (large tubular ram), fire extinguisher, and animal loose pole.

Lt. Fasano was asked to further explain a soft entry. Specifically, Lt. Fasano was asked when the team members enter an apartment on a soft entry. Lt. Fasano said that it all depends on the demeanor of the residents. If the door is opened and the occupants are compliant and agree to let the officers into the apartment, the team enters the apartment, explains why they are there, and conduct the search. If the occupants “try to close the door in our face or run toward the rear of the apartment,” we will “charge” into the apartment.

After climbing the stairs, the team knocked erroneously on the wrong apartment, presumably § 87(2)(b). Lt. Fasano said the cause of this error was “human error.” When asked if there was any factors that led to the confusion, perhaps involving the doors or the layout of the floor, Lt. Fasano replied, “No, not to my knowledge.” When further pressed, Lt. Fasano said that it was simply “a mistake.” Lt. Fasano said that PO Perez was doing the knocking and he did not recall if there was anyone else with him at the door. Lt. Fasano said that his role was that of supervisor and that he was therefore 3-4 people back, behind the officers assigned to ‘cuff and toss’ roles. Lt. Fasano did not recall the exact size of this specific floor and could therefore not state with certainty where the other officers of the team were located while PO Perez was at the front door. Lt. Fasano stated that the officers would have been divided between the hallway/landing and the stairwell. Although he could not recall where precisely he was standing, Lt. Fasano did have line of sight to the front door.

PO Perez knocked on the door and an older couple answered the door, known to the investigation as § 87(2)(b) and § 87(2)(b). Lt. Fasano stated that it was immediately clear that the officers had knocked on the wrong door. PO Perez apologized to the couple and told them that they would be back in “one second” to apologize and explain themselves. Lt. Fasano described this conversation as very brief. Lt. Fasano said that he believed PO Perez made this decision based upon his investigatory work: “PO Perez had an idea of what to expect in the target apartment” and apartment § 87(2)(b) was not what he was expecting. Lt. Fasano noted that they had to move quickly to apartment § 87(2)(b) because they did not want the “commotion” to alert the target residence. Lt. Fasano did not have any contact with § 87(2)(b) or § 87(2)(b) before going to apartment § 87(2)(b). No officers entered apartment § 87(2)(b) at this time.

The officers then moved next door to the target apartment and executed another soft entry. The residents of § 87(2)(b) opened the door and were generally compliant. The warrant resulted in the arrest of three individuals for § 87(2)(b).

After executing the warrant in apartment § 87(2)(b) Lt. Fasano returned alone to apartment § 87(2)(b) an estimated 10-15 minutes after PO Perez first knocked on their door. Lt. Fasano wanted to apologize to the occupants. When asked why he thought an apology was necessary, Lt. Fasano said it is startling to have police at your door and he did not want their presence to mistakenly implicate the occupants in being involved with narcotics. Lt. Fasano further noted that his job as a member of the police department is to help get rid of drugs not to scare law-abiding citizens. Furthermore, “as overall supervisor, I felt it was my duty to apologize for any inconvenience I may have caused them.” When asked if the inconvenience he was referring to was “just knocking on their door,” Lt. Fasano said, “Yeah.” Lt. Fasano identified himself as a supervisor and sat down with the couple on their couch. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) Lt. Fasano said that § 87(2)(b) § 87(2)(b) asked about the department’s ride-along program. When asked directly, Lt. Fasano could not recall if § 87(2)(b) asked directly about the ride-along program or if that was something Lt. Fasano volunteered. § 87(2)(b) did not complain of any injuries. Lt. Fasano did not ask § 87(2)(b) if he had any injuries – “There seemed no need” – and did not ask § 87(2)(b) if he needed an ambulance. Lt. Fasano admitted that they made a mistake and thanked the couple for their cooperation. § 87(2)(b) did not seem upset about the incident and, in fact, thanked the officers for addressing the problem. Lt. Fasano described the meeting as short and stated that the couple did not express any complaints or lodge any allegations. Lt. Fasano shook the residents’ hands and left the apartment.

Capt. Johnson was present at the scene as the overall supervisor. Lt. Fasano did not recall if Capt. Johnson had any conversation with § 87(2)(b) and § 87(2)(b).

Lt. Fasano stated that he was the only officer to enter the apartment and did so only after executing the warrant at apartment § 87(2)(b). No officer had their guns pointed during the incident. Lt. Fasano stated neither he nor any other officer said, “Oh shit, we’re in the wrong apartment.”

Capt. Lorenzo Johnson

Capt. Johnson is a § 87(2)(b)-old white male who was appointed to the force in January 1988. He is 5’ 10” and 225 pounds with brown hair and hazel eyes. Capt. Johnson could not recall his exact tour but stated that he was wearing plainclothes and an NYPD raid jacket with his shield displayed. Capt. Johnson said that his double bars are visible on his current raid jacket but could not recall if they were visible on his old raid jacket, which he had at the time of the incident. Capt. Johnson was working as the group captain for the execution of a search warrant. As group captain, Capt. Johnson said that he was responsible for “arresting the right people” and securing the door when they left. Capt. Johnson does not have a role in the entry team.

CCRB Statement: October 17, 2007 (encl. 14A-B)

On November 15, 2006, Capt. Johnson’s team proceeded to § 87(2)(b) to execute a warrant at apartment § 87(2)(b). Prior to arriving at the location, Capt. Johnson and the team decided to conduct a soft entry because they had information that there were small children in apartment § 87(2)(b). The team’s heavy equipment, including the ram, is brought to the floor, even on a soft entry.

Capt. Johnson said that the team erroneously knocked on the wrong door. Capt. Johnson did not know why this mistake was made. Capt. Johnson did not recall who was knocking on the door. Capt. Johnson reviewed the tactical plan from the date of the incident but this did not jog his memory. Speaking generally, Capt. Johnson said that procedure would dictate that the officers assigned to bunker (PO Perez) and bunker security (PO Ames) would be at the door. Capt. Johnson was not at the door and did not have line of sight of apartment § 87(2)(b) while they were knocking on it. Capt. Johnson said that he is not part of the entry team. Capt. Johnson learned about the § 87(2)(b) interaction after the incident at an unknown time. Capt. Johnson said that the officers did speak to the resident(s) of § 87(2)(b) but to Capt. Johnson’s knowledge, no member of his team entered apartment § 87(2)(b).

The investigator asked Capt. Johnson what generally happens after the officers knock on the door and the tenant opens the door. Capt. Johnson said, “It – it varies. I mean, for the most part, we usually grab the person who is supposed to be the perpetrator but again, like I said, it was clearly marked, so I believe they found out their mistake right away.” Capt. Johnson was asked later in the interview what happens after the door is opened – is there a conversation between the tenant and the officers, for example – but Capt. Johnson said that it was different in each circumstance and was unable to comment. Capt. Johnson was again then asked how the field team knows when to enter the apartment and Capt. Johnson said that it would usually be discussed amongst the members of the field team in advance; Capt. Johnson was not privy to this information in the specific incident.

Capt. Johnson was just reaching the § 87(2)(b) floor landing when officers were already entering apartment § 87(2)(b). Capt. Johnson did not cite a specific reason that he was still on the stairs by the time the officers were about to enter the apartment. Capt. Johnson said that he was “gimpy” and required more time.

Lt. Fasano returned to apartment § 87(2)(b) after the team executed the warrant at § 87(2)(b). Capt. Johnson did not instruct Lt. Fasano to do this and believed Lt. Fasano returned of his own initiative. Capt. Johnson did not know anything about this second interaction.

§ 87(2)(e), § 87(2)(f)

When asked if Capt. Johnson had any contact with this individual, Capt. Johnson said he may have checked to see if the male was okay. When pressed, Capt. Johnson said that he did not remember this specifically. Capt.

Johnson was asked a third time if he remembered speaking to § 87(2)(b) § 87(2)(e), § 87(2)(f) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Capt. Johnson did not remember § 87(2)(b) [REDACTED]
complaining of any injuries at any point. Capt. Johnson did not know if there were any other residents in § 87(2)(b) [REDACTED] besides § 87(2)(b) [REDACTED]

Capt. Johnson did not nor did he hear any member of his team say, “Oh shit, wrong apartment.” Capt. Johnson did not have his gun drawn during the incident and did not know whether members of his team had their guns drawn.

The investigator asked Capt. Johnson if he entered apartment § 87(2)(b) [REDACTED] and Capt. Johnson replied, “I don’t believe so – No. That’s the – yeah, that’s the apartment. Yeah, I don’t believe so.”

PO Rolando Carbonell

PO Carbonell is a § 87(2)(b) [REDACTED]-old Hispanic male who was appointed to the force in July 2001. He is 6’ 2” and 220 pounds with black hair and brown eyes. PO Carbonell held the rank of detective at the time of this interview but will be referred to as a police officer since that is the rank he held at the time of the incident. PO Carbonell has been in narcotics for approximately two years and does an average of four or five warrants a month.

On November 15, 2006, PO Carbonell was working a 9:33 AM to 6:00 PM tour assigned to the 44th Precinct Bronx narcotics module. The team was executing a search warrant on the date of the incident and was led by three supervisors: Sgt. John Urena, Lt. Christopher Fasano, and Capt. Lorenzo Johnson.

Memo Book: November 15, 2006 (encl. 15A-B)
No relevant entries.

CCRB Statement: August 29, 2006 (encl. 16A-B)

On November 15, 2006, PO Carbonell and his team went to § 87(2)(b) [REDACTED] to effect a soft entry search warrant in apartment § 87(2)(b) [REDACTED]. It was decided that a soft entry would be used because it was known that there were young children in the target apartment.

Upon review of the relevant tactical plan, PO Carbonell confirmed that he was assigned to the ram. During a soft entry, all heavy equipment – including the ram – is still brought to the target location (i.e., upstairs). PO Carbonell clarified, though, that the officer assigned to the ram (PO Carbonell) would not be responsible for carrying the ram from the van to the § 87(2)(b) [REDACTED] floor because the officer that is going to *swing* the ram (PO Carbonell) needs to be “fresh.” Thus, PO Carbonell said that if a soft entry goes smoothly, the “ram” officer will never even touch the ram and that it will stay in possession of the person designated to carry the ram. PO Carbonell did not know who carried the ram on this date.

Once on the § 87(2)(b) [REDACTED] floor, Capt. Johnson positioned himself at the door. PO Carbonell said that he was positioned with the rest of the team on the stairs leading to the § 87(2)(b) [REDACTED] floor and that he was toward the rear of this group. PO Carbonell contradicted himself and at one point said that he could not see the door from this position but later said that he was able to see the door. Regardless, PO Carbonell said that he knew that Capt. Johnson and possibly others spoke with a resident of § 87(2)(b) [REDACTED] before moving over to apartment § 87(2)(b) [REDACTED]. PO Carbonell did not ever learn from his supervisors or team members what happened at the door to § 87(2)(b) [REDACTED]. PO Carbonell did not learn why the confusion between § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] arose or how it was determined that § 87(2)(b) [REDACTED] was, in fact, the wrong apartment. PO Carbonell said that neither he nor any member of the field team entered apartment § 87(2)(b) [REDACTED]. PO Carbonell did not nor did he hear anyone say, “Oh shit, we’re in the wrong apartment.”

The officers then immediately moved next door to § 87(2)(b). The resident of apartment § 87(2)(b) was compliant and they effected a soft entry search warrant. PO Carbonell did not ever return to apartment § 87(2)(b) after entering apartment § 87(2)(b).

Generally speaking, PO Carbonell said that the police knock on the door, the residents usually ask, “Who is it?” and the police then identify themselves as such and it is explained that they have a warrant. When the tenant opens the door, the officers are allowed to “just go in.” PO Carbonell said that this was how the entry proceeded at apartment § 87(2)(b). The investigator asked why the team did not “rush into” apartment § 87(2)(b) once the door was opened but PO Carbonell said that he could not answer that because he was not at the front of the line and did not know what specifically happened at the door.

PO Carbonell was asked when the field team enters the apartment. PO Carbonell said that the point of a soft entry is that the resident controls the entry into the apartment and that entry is not automatic upon the door being opened. PO Carbonell said that the team would not enter the apartment until some sort of signal or verbal command was conveyed from the supervisor(s) at the door to the entry team.

PO Carbonell did not witness any officers with their guns drawn and added that guns are not drawn during a soft entry.

Officers Not Interviewed

§ 87(2)(g)

Medical Documents (encl. 17)

The Emergency Nursing Record indicates that § 87(2)(b) rated his pain as “mild” and described it as a result of a direct blow. “Tenderness” is indicated on the top of the right foot. No mechanism is indicated. § 87(2)(b) was discharged with instructions to take Tylenol. X-rays of § 87(2)(b)'s foot were taken but none of the three views revealed any evidence of a fracture or dislocation.

NYPD Documents

Warrant-Related Documents (encl. 18). The *Search Warrant Tracking Report* summarizes the *Pre-Warrant Data Entry Form* and the *Post-Warrant Data Entry Form*, both of which the narcotics division also supplied to the CCRB. The *Search Warrant Tracking Report* indicates that PO Perez requested the present warrant (§ 87(2)(b)) § 87(2)(e), § 87(2)(f)

§ 87(2)(b). The warrant was granted a no-knock exception and was deemed positive overall, with the recovery of 31 bags of marijuana and 1 arrest. The *Pre-Execution Plan* lists each members' assignment: Capt. Johnson and Lt. Fasano functioned as the team supervisor and team leader, respectively; PO Perez: bunker; PO Keith Ames: bunker security; PO Carbonell: ram/hall security; Sgt. Urena and Det. John Lindsey: cuff and toss; Det. Gregory Smith: hall security and animal control; Det. Anthony Young and Det. Philip Paradiso: rear security; Det. Nancy Vasquez: front security and hospital car.

Complainant/Victim Criminal Conviction History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

Neither § 87(2)(b) nor § 87(2)(b) have complaint histories with the CCRB (encl. 2A-B).

Police Officer CCRB History

Neither Capt. Johnson, Lt. Urena, nor PO Perez have substantiation histories with the CCRB (encl. 1A-C).

Conclusions and Recommendations

Identification of Subject Officers

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Undisputed Facts

Officers had an interaction with one or more residents of apartment § 87(2)(b) before executing a warrant at apartment § 87(2)(b). Lt. Fasano later visited the residents of apartment § 87(2)(b) and apologized for the inconvenience.

Disputed Facts

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Assessment of Evidence

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

[Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g)

§ 87(2)(b) said that he observed two gold bars on the collar of one of the last officers to leave his apartment. Two gold bars are the collar device for captains and yet Capt. Johnson – although tentatively – said that he never entered apartment § 87(2)(b). Even more tentatively, Capt. Johnson said that he did not have any contact with § 87(2)(b) and was not even on the § 87(2)(b) floor until after § 87(2)(b)'s door was closed.

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: Abuse of Authority: Sgt. John Urena entered § 87(2)(b) in the Bronx.

§ 87(2)(g)

Allegation B: Abuse of Authority: Capt. Lorenzo Johnson supervised the entry into § 87(2)(b) in the Bronx.

§ 87(2)(g)

Allegation C: Force: PO Carmelo Perez pointed his gun at § 87(2)(b)

Allegation D: Force: An officer pointed his gun at § 87(2)(b)

§ 87(2)(b) alleged that the black male officer at the door, identified by the investigation as PO Perez, pointed his gun at him as officers entered the apartment. PO Perez wholly denied this series of events and specifically denied ever pointing his weapon. § 87(2)(b) alleged that a different black male pointed his weapon at her. § 87(2)(g)

Allegation E: Discourtesy: An officer spoke rudely to § 87(2)(b)

§ 87(2)(b) alleges that an officer said, “Oh shit, we’re in the wrong apartment.” § 87(2)(b) admitted that he did not see the officer make this statement because he was facing the wall. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: